

Remarks

Claims 1-30 are pending in the application. All claims stand rejected. Claim 3 has been canceled. By this paper, independent claims 1, 13, 17, and 24 have been amended merely to include the subject matter of dependent claim 3. Accordingly, no new issues have been raised. Reconsideration of all pending claims herein is respectfully requested.

Claims 1-5, 9-11, 13-19, and 21-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,774,926 to Ellis et al. ("Ellis") in view of U.S. Patent No. 6,477,704 to Cremia et al. ("Cremia").

Claim 1 requires accessing the website and utilizing a web-based application to schedule and organize the media objects into a media program. Ellis does not disclose accessing a website and scheduling and organizing media objects stored on the website into a media program. This is in accordance with the Office Action which states that "Ellis fails to disclose . . . accessing the website with web-based application to schedule and organize the media objects." Page 3, second paragraph.

The Office Action states that "Cremia teaches a method and system in which a customized media list is generated at a web server for distribution to users for providing the users with customized programming." Page 3, third paragraph. However, Cremia does not teach accessing a website with a web-based application to schedule and organize media objects into a media program. In Cremia, a user may select content from a catalog database. Column 6, lines 3-11 and column 7, lines 22-27. The selected content is then sent to a request database. Column 6, lines 8-10 and column 7, lines 29-31. A play list is generated using a predetermined

formula based on the relative number of requests for each available content segment by individuals. Column 6, lines 14-16. The formula may be based on a bell-curve. Column 6, line 17. The most popular content is broadcast to the individuals. Column 6, lines 17-18. Thus, Cremia does not allow an individual user to schedule and organize media objects into a media program. An individual may submit requests, and then, based on a formula, a request may be broadcast at some unknown time. Cremia teaches that only the popular selections are broadcast with no opportunity to schedule the programming.

Cremia is the antithesis of the present application in that rather than an individually customized channel, programming is subject to the will of the group. The ability to create, organize, schedule, and edit a media program through a website provides manageability and convenience to the user. Through a user-friendly interface, such as is disclosed in Figure 7, media objects are organized and a scheduled program may be viewed prior to transmission. Ellis and Cremia do not teach web access to schedule and organize media objects.

Because Ellis and Cremia fail to disclose the limitation of accessing the website with a web-based application to schedule and organize the media objects into a media program, they cannot obviate independent claim 1. "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." MPEP § 2143.03.

The Applicant further submits that Ellis and Cremia provide no motivation to combine the references and instead teach away from one another. "The mere fact that references can be combined or modified does not render the resultant

combination obvious unless the prior art also suggests the desirability of the combination." In re Mills, 916 F.2d 680, 683, 16 USPQ2d 1430, 1433 (Fed. Cir. 1990). Even if all the elements of claim are disclosed in the various prior art references, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the prior art why one of ordinary skill would have been prompted to combine the teachings of the references to arrive at the claimed invention.

Ellis discloses a personal television channel system so that individuals in a home "may create personal television channel programming." Abstract. The programming is specifically customized according to a user's selections. Cremia teaches media delivery based on statistically-identified most popular content. Abstract. According to Cremia, a user is incapable of creating personal television channel programming. A majority will always dictate the media that will be broadcast. Thus, personalization and customization cannot exist in Cremia which teaches away from the very purpose of Ellis. Given the contrasting features of personalization versus "majority rule," there is no motivation to combine these two references.

Amended claim 1 further requires that the media objects be of different file types including audio-only files (e.g., MP3 files) and audio/video. Support for this amendment is found at page 12 of the specification. Claim 1 also requires organizing the media objects including the audio-only files and audio/video files into a media program.

Ellis does not disclose the use of both audio-only files and audio/video files as part of a media program. The Office Action, in reference to claim 3, takes Official

Notice that "It would have been well known to transmit an audio file to provide a user with audio information for which a user might to hear." Page 4, third paragraph.

The Applicant respectfully traverses the taking of Official Notice with respect to organizing the media files, including both audio-only files and audio/video files, into a media program. When a user turns on a channel a user is typically presented with television programs. Conventionally, a user does not expect to watch television for a certain time and then be presented with an audio-only broadcast for a certain time. Similarly, conventionally a user does not tune a channel to audio and then, after a certain time, watch video programming. Claim 1 recites a media program that includes both audio and video. Audio-only channels and video-only channels are known in the art, but a synthetic channel configured by a user via a web server with both an audio-only file and an audio/video file has not been shown in the Office Action. In accordance with the pending application, a user may schedule an audio-only file during the dinner hour for listening pleasure. A user may also schedule a audio/video file to follow for viewing pleasure after dinner. A media program such as this is not commonly known in the art.

"Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstrations as being well-known." MPEP § 2144.03.A. The Applicant respectfully submits that a media program including an audio file and a video file is not capable of instant and unquestionable demonstration.

Cremia does not teach a media program having both audio-only and audio/video files. Cremia teaches that media content may be audio broadcasts. Column 2, lines 63-64. Cremia discloses audio broadcasts with particular application to radio. Column 7, line 55 to column 8, line 67. Cremia also teaches that the media content may be video segments. Column 2, lines 65-66. Cremia does not teach organizing and scheduling media objects to provide a media program having both audio broadcasts and video segments.

The remaining Independent claims 13, 17, and 24 include similar limitations and are likewise patentably distinct for at least the same reasons. Claims 2, 4, 5, 9-11, 14-16, 18, 19, 21-23, and 25-30 depend from their respective Independent claims and represent patentable subject matter by virtue of that dependency.

Claims 6-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ellis in view of Cremia and further in view of U.S. Patent No. 4,937,866 to Crowther et al. Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ellis in view of Cremia and further in view of U.S. Patent No. 6,208,746 to Musgrave. Claim 20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ellis in view of Cremia and further in view of U.S. Patent Publication No. 2001/0049720. Claims 6-8, 12, and 20 depend from independent claims that have been distinguished from Ellis and Cremia above and represent patentable subject matter.

In view of the foregoing, all pending claims represent patentable subject matter. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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